Office-Supreme Court, U.S.
FILED
JUN 15 1981
ALEXANDER L. STEVAS,
CLERK

80-2133

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

QUAD C CORPORATION and
ASSOCIATED GENERAL CONTRACTORS
OF CALIFORNIA, Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
CALIFORNIA STATE COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LAURA STEVENS
3365 Mission Street
San Francsico,
California 94110
(415) 285-7314
Counsel for Petitioners

The petitioners Quad C Corporation[1] and the Associated General Contractors of California respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on February 23, 1981, rehearing of which was denied on March 18, 1981.

QUESTIONS PRESENTED

1. Whether one labor organization with two sub-divisions may apply differing standards to employers such that some employers are permitted to have certain specified work performed by union members under one collective bargaining agreement and other employers are not permitted to have that same work performed under that same agreement.

2. When a construction industry employer has established a relationship with a union that comes within Section 9(a) of the National Labor Relations Act (29 USC §159(a)), may that employer

---

[1]Quad C Corporation has no parent, subsidiary or affiliate corporations.

be required to enter into a pre-hire agreement, as defined by Section 8(f) of the Act, (29 USC §158(f)) with a second representative of the same employees covered by the collective bargaining agreement with the Section 9 representative.

TABLE OF CONTENTS

Questions Presented..... 1
Opinions Below..... 4
Jurisdiction..... 4
Statutes Involved..... 4
Statement of the Case..... 5
Reasons for Granting Writ 9
Conclusion.....13
Appendix A (Opinions Below)..... App. 1
(Statutes Involved).... App. 7

CITATIONS

CASES:

Carpenters District Council v. Blake Construction Co., 457 F.Supp. 830, (E.D.Va. 1978).....11

NLRB v. Iron Workers, Local 103, 434 U.S. 335, (1978).....10

R.J. Smith Construction Co., 191 NLRB 695 (1971).....12

OPINIONS BELOW

The initial opinion and order of the National Labor Relations Board is reported at 246 NLRB No. 75 and is attached hereto as Appendix A, infra, page App. 4. The judgment of the Ninth Circuit Court of Appeals, enforcing the Board's Order, appears in Appendix A hereto, infra, page App. 1. The Ninth Circuit's Order denying rehearing appears at Appendix A, infra, page App. 6.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on February 23, 1981. A timely petition for rehearing was denied on March 18, 1981, and this petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC §1254(1).

STATUTES INVOLVED

The provisions of 29 USC §158(a)(5), 29 USC §158(f) and 29 USC §159(a) are involved in the questions presented herein. These appear in Appendix A, infra, page App. 7 et seq.

STATEMENT OF THE CASE

This matter was before the NLRB on an unfair labor practice charge found for respondent State Council of Carpenters. The Board thereafter sought and obtained enforcement of its Order from the Ninth Circuit Court of Appeals.

Petitioner Quad C Corporation was founded in 1972 in San Francisco. At the time of its formation, Quad C obtained a general contractor's license, but at all times the work it performs has remained the same. That work consists of sub-contracting "interior systems" in commericial construction, which includes fireproofing the steel frame (performed by members of unions not here at issue), laying out the partition lines and tracks for the walls and floors and erecting the metal studs to which the walls and ceilings will be fixed (performed by members of the United Brotherhood of Carpenters and Joiners of America). Thereafter, either gypsum wallboard ("drywall" or "sheetrock") is attached to these wall and ceiling frames, by members of the Carpenters Union, or lath and plaster are applied, by members of other

unions, depending on what is required.

Approximately 30% of the work performed by Quad C is performed by carpenters and of that work, only 5% is the actual application of drywall to the wall. The remaining 95% of the carpenters' work consists of layout and framing of the walls, setting door frames, hanging doors, laying hardware and related work.

From its inception, Quad C has been signatory to the Carpenters 46 Counties Agreement, which is negotiated by the 46 Counties Conference Board for the Union, and by the Associated General Contractors of California ("AGC") for the employers. When Quad C needs carpenters to perform the work described above, it contacts the carpenters' Locals, requests that they send "experienced sheetrock people" and the Locals dispatch these, with a dispatch slip from the 46 Counties Conference Board. All of the Locals are members of the 46 Counties Conference Board and are affiliates of the State Council of Carpenters. Since 1957 the State Council of Carpenters has negotiated a Drywall Master Agreement (and memorandum agreements

thereunder), with the California Drywall Contractors Association. The State Council and the 46 Counties Conference Board have no direct relationship with each other as to bargaining.

The State Council has asserted in the proceedings heretofore that drywall work is not covered by the 46 Counties Agreement with AGC. However, it is undisputed in the Record that other AGC members perform that work under that Agreement. At the time of the hearing before the National Labor Relations Board, Quad C had eight carpenters working for it who were employees lent to it by large general contractors. These people were covered by the 46 Counties Agreement. Similarly, in the Santa Clara area, less than 50 miles from San Francisco, under the 46 Counties Agreement, the Union will dispatch a carpenter with drywall experience.

In 1974, while Quad C President, Robert Chaney, was in the hospital, his partner Gene Connell was informed by the Carpenters' Union that it would not dispatch any sheetrock carpenters unless Quad C signed the drywall memorandum

agreement. Mr. Connell signed. As soon as Mr. Chaney returned to work he notified the State Council, both orally and in writing, that Quad C had not been and would not be a party to the Drywall Master Agreement. These notices were rejected by the State Council as untimely under the provisions of that Agreement. Nonetheless, from May 12, 1975 Quad C refused to return Drywall Trust Fund forms or pay into the Drywall Trusts. Rather, Quad C paid like monies into the 46 Counties Trust, which provided the same coverage to the employees.

On May 31, 1977 Quad C sent another letter to the State Council informing them that Quad C had not been bound by the 1974-1977 Drywall Master Agreement and that in any case it would ". . . not be a party to the Drywall Master Agreement with the contract term beginning August 1, 1977." This letter was accepted by the State Council as a timely notice of Quad C's intention to terminate its contractual relationship under the 1977-1980 Drywall Master Agreement and requested a meeting to negotiate a new agreement to cover Quad C's carpenters.

In response, Quad C informed the State Council that it was a member of AGC, and that AGC had advised Quad C that ". . . the work it [Quad C] performs is covered under the AGC agreements with [the 46 Counties Conference Board]."

The State Council reiterated its demand to bargain, and Quad C replied that AGC was its bargaining agent and that the work in question was covered by existing agreements. The State Council next directed its bargaining demand to AGC. AGC responded that the 46 Counties Agreement covers all carpentry work performed by its member Quad C, and further that AGC did not have ". . . the 'power of attorney' from Quad C to represent them . . ." in the proposed negotiation. The State Council filed the unfair labor practice charge underlying this action thereupon, and the Board found a §158(a) violation.

REASONS FOR GRANTING WRIT

Assuming arguendo Quad C lawfully executed an Agreement pursuant to 29 USC §158(f) with the State Council, it cannot, as a matter of policy, be

given precedence over a pre-existing Section 9 relationship. Section 9 requires exclusive bargaining and creates a relationship given great protection by the National Labor Relations Act. NLRB v. Iron Workers, Local 103, 434 U.S. 335 (1978), compels a finding that an existing Section 9 relationship takes priority over a conflicing 8(f) contract. To find otherwise would be to create massive destabilization in construction industry labor relations. Any employer dissatisfied with the majority representative could enter into an 8(f) contract with a competing group and effectively decertify the existing union.

The decisions below are tantamount to this destabilization rule. Quad C had, in 1972, and continues to have, a Section 9 relationship with the 46 Counties Conference Board, established initially through an 8(f) contract. Nonetheless, the Board so elevated the 8(f) contract with the State Council that it negated the long-standing relationship with the 46 Counties. In NLRB v. Iron Workers, supra, this Court cited with approval the

Board's view of 8(f) agreements:

> Until [an 8(f) attains majority support] the pre-hire agreement is voidable and does not have the same stature as a collective-bargaining contract entered into with a union actually representing a majority of the employees and recognized as such by the employer.
> at 2335

When, in 1974, over Quad C's repeated objections, Quad C entered into an 8(f) contract with the State Council, and maintained its 46 Counties contract, no presumption could arise that its carpenters continued membership in the same local Unions had shifted the Section 9 relationship to the State Council. Rather, the existing Section 9 relationship under the 46 Counties persisted, and was reaffirmed by all the acts of Quad C.

The relevant conduct includes Quad C's repeated attempts to withdraw from the State Council Agreement and Quad C's refusal to comply with its terms. This behavior in itself constitutes termination of the agreement. Carpenters District Council v. Blake Construction

Co., 457 F.Supp. 830 (E.D.Va. 1978); R.J. Smith Construction Co., 191 NLRB 695 (1971). Certainly, absent some affirmative showing, no presumption of a Section 9 relationship with the State Council can arise at any point in this history.

Indeed, since the 46 Counties Conference Board and the State Council are both affiliates of the United Brotherhood of Carpenters, it would be reasonable to assume that, as this dispute with Quad C developed, the 46 Counties Board would have indicated their own withdrawal in favor of the State Council if that was the Union's position as to the appropriate representative of its members. No such event occurred. The AGC's Assistant Labor Relations Director testified that on several occasions he discussed Quad C's relationship under the 46 Counties Agreement with the 46 Counties Board. The record is silent as to the content of these discussions; surely counsel for the Board would have elicited the evidence that the 46 Counties desired an end to their majority status for the

benefit of the State Council if such had occurred. Petitioners urge that the United Brotherhood of Carpenters and Joiners of America had an affirmative obligation to designate the sole appropriate representative of the Quad C carpenters, using as its standard the practices employed with other employers. After such designation the non-representative body must affirmatively withdraw from any relationship with the employer.

By the failure of the State Council to achieve majority status, and the continued majority status of the 46 Counties Board, this employer should have no obligation to bargain with the State Council. Rather, policy demands that the majority status of the 46 Counties Agreement be protected and that Quad C be free to maintain that relationship only so long as the employees do not chose an alternate representative.

CONCLUSION

For the reasons presented above, a writ of certiorari should issue to

review the judgment of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

LAURA STEVENS
3365 Mission Street
San Francisco, California
94110
Counsel for Petitioners

June 10, 1981

APPENDIX A

1. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. NATIONAL LABOR RELATIONS BOARD, Petitioner, v. QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, Respondents, and CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, Intervenor, No. 79-7686.

JUDGMENT. Before: WALLACE and FARRIS, Circuit Judges and KING (Honorable Samuel P. King, Chief District Judge of the District of Hawaii, sitting by designation), Chief District Judge.

THIS CAUSE came on to be heard upon an application of the National Labor Relations Board for enforcement of an order issued against Respondents Quad C Corporation, and Associated General Contractors of California, San Francisco, California, their officers, agents, successors, and assigns, on November 14, 1979. The Court heard argument of respective counsel on January 14, 1981, and has considered the briefs and transcript of record filed in this cause. On February 9, 1981, the Court being fully

advised in the premises issued its opinion enforcing the Board's order. In conformity therewith it is hereby

ORDERED AND ADJUDGED by the Court that:

Respondents, Quad C Corporation and Associated General Contractors of California, San Francisco, California, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with California State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, (hereinafter called the Union) as the exclusive representative of the following appropriate bargaining unit:

> All journeymen and trainee drywall installers, employed by Quad C Corporation with the State of California, but excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interferring with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7

of the National Labor Relations Act, (hereinafter called the Act).

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with the Union, as the exclusive representative of all employees in the appropriate unit, described above, with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their offices and construction premises copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 20, San Francisco, California of the National Labor Relations Board, after being duly signed by Respondents' authorized representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places

where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the aforesaid Regional Director for Region 20, in writing, within 20 days from the date of this Judgment, what steps Respondents have taken to comply herewith.

Endorsed, Judgment Filed and Entered
/s/ Richard H. Deane

SO ORDERED:
JUDGES: J. Clifford Wallace, CJ; JEROME FARRIS, CJ, SAMUEL P. KING, DJ

2. NATIONAL LABOR RELATIONS BOARD. QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, San Francisco, Calif. and CARPENTERS, CALIFORNIA STATE COUNCIL, Case No. 20-CA-13623, November 14, 1979, 246 NLRB No. 75, Administrative Law Judge Jerrold H. Shapiro.

Before Fanning, Chairman; Penello and Truesdale, Members.

Construction contractor and multi-employer association violated Section 8(a)(5) of LMRA when they refused to bargain with union council for new bargaining agreement covering contractor's drywall installers. (1) Contractor contends that earlier drywall memorandum agreement it executed does not give rise to usual presumption of majority status on behalf of council because it was prehire agreement within meaning of Section 8(f) of Act, but all of contractor's drywall installers were members of local unions affiliated with council; (2) it is contended that drywall memorandum agreement was product of coercion due to council's threat to cease referring drywall installers, but such conduct is barred by statute of limitations, and in any event, all of contractor's drywall installers were members of local unions affiliated with council; (3) it is contended that unit of contractor's drywall installers is not appropriate because they perform substantial amount of conventional carpentry work, but they are readily identifiable and homogeneous group of construction tradesmen

with separate community of interest, and contractor has always treated them as separate unit; (4) contractor contends that its drywall installers are covered by carpentry master agreement which multi-employer association entered into with council's international, but international and its affiliates, including council, intended that drywall installers would not be covered by carpentry master agreement but by council's drywall master agreement, to which contractor obligated itself when it executed drywall memorandum agreement; (5) contractor knew when it signed drywall memorandum agreement that as of that date terms and conditions of employment of its drywall installers were governed by drywall master agreement, and when contractor timely terminated drywall master agreement, it was required to bargain with council for new agreement covering drywall installers.

3. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. NATIONAL LABOR RELATIONS BOARD, Petitioner, vs. QUAD C CORPORATION and ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, Respondents, and CALIFORNIA

STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, Intervenor. ORDER. Before: WALLACE and FARRIS, Circuit Judges, and KING (Honorable Samuel P. King, Chief Judge, United States District Court, District of Hawaii, sitting by designation), District Judge. Respondent's petition for rehearing is denied.

4. United States Code, Title 29 §158(a) It shall be an unfair labor practice for an employer-...(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

5. United States Code, Title 29 §158(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not

established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: Provided, That nothing in this subsection shall set aside the final

proviso to subsection (a)(3) of this section: Provided further, That any agreement which would be invalid but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

6. United States Code, Title §159(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not consistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been

given opportunity to be present at such adjustment.

Office-Supreme Court, U.S.
FILED
AUG 17 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2133

In the Supreme Court of the United States

OCTOBER TERM, 1980

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD AND CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

WILLIAM A. LUBBERS
General Counsel
JOHN E. HIGGINS, Jr.
Deputy General Counsel
ROBERT E. ALLEN
Acting Associate General Counsel
NORTON J. COME
Deputy Associate General Counsel
LINDA SHER
Assistant General Counsel
MIRIAM SZAPIRO
Attorney
National Labor Relations Board
Washington, D.C. 20570

QUESTION PRESENTED

Whether substantial evidence supports the National Labor Relations Board's finding that petitioners violated Section 8(a)(5) and (1) of the National Labor Relations Act by withdrawing recognition from the California State Council of Carpenters and refusing to bargain collectively with it over a new contract covering a unit of drywall installers.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Statute involved	2
Statement	2
Argument	5
Conclusion	8

TABLE OF AUTHORITIES

Cases:	
NLRB v. *Crimptex, Inc.*, 517 F.2d 501	6
NLRB v. *Frick Co.*, 423 F.2d 1327	6
NLRB v. *Iron Workers*, 434 U.S. 335	7
NLRB v. *Irvin*, 475 F.2d 1265	6
NLRB v. *Tragniew, Inc.*, 470 F.2d 669	6
Retired Persons Pharmacy v. *NLRB*, 519 F.2d 486	6
Statute:	
National Labor Relations Act, 29 U.S.C. 151 *et seq*	2
Section 8(a)(1), 29 U.S.C. 158(a)(1)	5
Section 8(a)(5), 29 U.S.C. 158(a)(5)	5
Section 8(f), 29 U.S.C. 158(f)	6
Section 9(a), 29 U.S.C. 159(a)	6

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2133

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD AND CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-2a)[1] is not reported. The order of the court of appeals denying rehearing (App., *infra*, 3a) is not reported. The decision and order of the National Labor Relations Board (App., *infra*, 4a-30a) are reported at 246 N.L.R.B. No. 75.

[1] The opinion of the court of appeals and the decision and order of the Board were not included in the appendix to the petition. Accordingly, they are appended hereto.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 1981. A petition for rehearing was denied on March 18, 1981. The petition for a writ of certiorari was filed on June 15, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, are reprinted at Pet. App. 7–10.

STATEMENT

Quad C Corporation is a licensed general contractor in California that primarily does subcontracting work installing interior ceilings and walls for commercial buildings (App., *infra,* 7a). This work is done by drywall installers who not only perform the specialized drywall tasks [2] but also do the routine carpentry work. Nonetheless, Quad C always hires drywall installers to do all of the work and pays them the drywall rate (App., *infra,* 8a).

Since 1972 Quad C has been a party to successive collective bargaining agreements known as the 46 Counties Agreement (App., *infra,* 8a). This is an agreement between employer associations including petitioner Associated General Contractors of California

[2] Drywall installation is recognized as a specialty trade in the State of California. In order to do this work, the drywall installer must master skills which differ markedly from those which are required for the performance of general carpentry. Drywall installers go to separate schools, undergo a separate training program, and command a substantially higher rate of pay than do conventional carpenters (App., *infra,* 8a n.3, 25a).

(AGC) and the United Brotherhood of Carpenters and Joiners of America (Carpenters International Union). Petitioner Quad C is a member of the AGC. The 46 Counties Agreement covers conventional carpentry work and is administered by an administrative affiliate of the International Carpenters Union, called the 46 Counties Carpenters' Conference Board (46 Counties Board).

The 46 Counties Agreement does not have a provision dealing with drywall installers and, when the AGC proposed including a wage scale classification for "drywall hangers", the union rejected the proposal and AGC dropped the matter (App., *infra*, 10a). Nonetheless, the Carpenters International supplies drywall installers to any employer who requests them for an isolated job, but requires that they be paid the rate set in what is called the Drywall Master Agreement.

The Drywall Master Agreement is a collective bargaining agreement that is negotiated and administered on behalf of the Carpenters International Union by the California State Council of Carpenters (State Council). The State Council bargains with the California Drywall Contractors Association over the terms and conditions of employment for drywall installers. The relationship between the 46 Counties Board and the State Council is that they are separate administrative divisions that negotiate and administer separate collective bargaining agreements for the Carpenters International Union. All of Quad C's employees are members of the Carpenters International Union (App., *infra*, 22a).

In 1974 the Carpenters International Union informed Quad C that if it did not become a signatory to the Drywall Master Agreement, then drywall installers would no longer be supplied (App., *infra,* 10a). To avoid a disruption in its supply of drywall installers, Quad C became a party to the Drywall Master Agreement in February 1974.

In August 1974, the Drywall Master Agreement was renewed for a three-year period ending in 1977 (App., *infra,* 13a). In May 1975, the Company wrote the State Council that it was not a party to the Drywall Master Agreement "for the contract term beginning August 1, 1974, and ending July 31, 1975" (App., *infra,* 14a). The State Council treated the Company's letter as a timely notice of the Company's intention to terminate its obligation to abide by the 1977–1980 successor to the 1974–1977 Drywall Master Agreement (App., *infra,* 15a). Accordingly, in September and October of 1977, the State Council requested that the Company bargain separately for a new contract covering the Company's drywallers. The Company refused, not because it doubted whether the State Council represented its drywallers, but because "all of the work it is presently performing is covered by the agreements negotiated by and between the Carpenters Union and AGC" (App., *infra,* 16a).

On October 21, 1977, the State Council directed its demand for bargaining on behalf of the Company's drywall employees directly to AGC. By letter dated January 11, 1978, the AGC responded that it did not

have "power of attorney" from Quad C to represent it in negotiating any agreement except the 46 Counties Carpenters' Agreement. AGC added that it was not "obligat[ed] to meet and negotiate terms and conditions for work covered by the Carpenter[s] Master Agreement to which Quad C is already currently signatory" (App., *infra*, 17a).

The Board, adopting the findings of the Administrative Law Judge, found that the Company violated Section 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. 158(a)(5) and (1), by withdrawing recognition from the State Council and refusing to bargain with it over a new agreement covering the Company's drywall installers (App., *infra*, 4a–5a). The Board ordered petitioners, *inter alia*, to bargain with the State Council on behalf of the drywall installers (App., *infra*, 5a).

The court of appeals, in a memorandum opinion, upheld the Board's decision and order, concluding that the Board's findings were supported by substantial evidence (App., *infra*, 1a).

ARGUMENT

The only issue in this case is whether the Board properly concluded that the State Council was the exclusive bargaining representative of Quad C's drywall installers. Quad C voluntarily recognized the State Council as the exclusive bargaining agent of the drywall installers. This action coupled with the undisputed fact that all of Quad C's employees were

members of the Carpenters International Union created a rebuttable presumption that after the expiration of the agreement the State Council still represented a majority of Quad C's employees. See *NLRB* v. *Crimptex, Inc.*, 517 F.2d 501, 503 n.2 (1st Cir. 1975); *NLRB* v. *Irvin*, 475 F.2d 1265, 1270–1271 (3d Cir. 1973); *NLRB* v. *Frick Co.*, 423 F.2d 1327, 1331–1332 (3d Cir. 1970). Petitioners therefore had the burden to prove by clear, cogent and convincing evidence that there was some reasonable doubt that the State Council continued to represent a majority of the employees. See *Retired Persons Pharmacy* v. *NLRB*, 519 F.2d 486, 489–490 (2d Cir. 1975); *NLRB* v. *Tragniew, Inc.*, 470 F.2d 669, 674–675 (9th Cir. 1972).

Petitioners do not argue directly that these holdings of the Board were incorrect. Instead, petitioners claim that Quad C had a pre-existing bargaining relationship with the 46 Counties Board and that this agreement should continue to operate.[3] However, the agreement between Quad C and the 46 Counties Board

[3] Petitioners assert that Quad C's agreement with the State Council was a mere pre-hire agreement. Under Section 8(f) of the Act, 29 U.S.C. 158(f), a union and an employer in the construction industry are permitted to enter into an agreement covering employees working in that industry even though the majority status of the union "has not been established under the provisions of Section 9 of this Act prior to the making of such agreement." Based on their view of the status of the agreement with the State Council, petitioners argue that the Board has elevated a mere pre-hire agreement over the Section 9(a), 29 U.S.C. 159(a), relationship that existed previously with the 46 Counties Board. They claim that this gives a pre-hire agree-

regulating conventional carpentry work is irrelevant to whether the State Council represented a majority of Quad C's drywall installers. The Board found, and the court of appeals upheld the finding, "that there can be no doubt that [the Company] knew when it signed the Drywall Memorandum Agreement that as of [February 26, 1974] the terms and conditions of employment of its workers classified as journeymen and trainee drywall installers were no longer governed by the 46 Counties Agreement but were governed by the Drywall Master Agreement" (App., *infra*, 26a–27a).

. This finding is supported by the fact that the 46 Counties Agreement makes no provision for drywall installers and that the State Council has negotiated for twenty years the terms and conditions of employment for the recognized specialty trade of drywall installers (App., *infra*, 25a). The prior agreement with the 46 Counties Board would be fully operative with regard to all conventional carpentry work that Quad C performs, but simply has nothing to do with the employment conditions of Quad C's separate unit of drywall installers. Thus, the Board and the court of appeals properly held that petitioners had no legitimate basis

---

ment undue weight in violation of general principles announced in *NLRB* v. *Iron Workers*, 434 U.S. 335 (1978).

There is, however, no basis for treating the agreement with the 46 Counties Board and that with the State Council differently. Both involved voluntary recognition of an affiliate of an international union by an employer whose employees were members of the international. There is therefore no basis for deciding which agreement should be given pre-eminence over the other.

for refusing to bargain with the State Council and that their refusal was an unfair labor practice.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

WILLIAM A. LUBBERS
General Counsel
JOHN E. HIGGINS, JR.
Deputy General Counsel
ROBERT E. ALLEN
Acting Associate General
NORTON J. COME
Deputy Associate General Counsel
LINDA SHER
Assistant General Counsel
MIRIAM SZAPIRO
Attorney
National Labor Relations Board

AUGUST 1981

---

[4] Petitioners also argue that allowing the State Council to interfere with the agreement they had with the 46 Counties Board will destabilize labor relations. Petitioners' argument is at least a bit disingenuous since Quad C voluntarily entered into the second agreement that supposedly created the "instability." Moreover, it is difficult to perceive what problem exists for the employer in allowing separate administrative units of the same union to enter into separate agreements with employers relating to different specialized units of employees.

APPENDIX

In the United States Court of Appeals for the Ninth Circuit

MEMORANDUM No. 79-7686

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, RESPONDENTS,

and

CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, INTERVENOR

[February 23, 1981]

Before: WALLACE and FARRIS, Circuit Judges, and KING,[1] Chief District Judge.

Substantial evidence on the record as a whole support the findings of the National Labor Relations Board that Quad C Corporation and Associated General Contractors of California violated Section 8(a)(5) and (1) of the National Labor Relations Act by withdrawing recognition from the California State Council of Carpenters and refusing to bargain collectively with the State Council over a new contract covering a recognized unit of drywall installers.

[1] Hon. Samuel P. King, Chief District Judge of the District of Hawaii, sitting by designation.

The order of the Board issued on November 14, 1979, against both Quad C Corporation and the Associated General Contractors of California is ENFORCED.

In the United States Court of Appeals for the Ninth Circuit

No. 79-7686

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, RESPONDENTS,

and

CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA INTERVENOR

ORDER

[March 18, 1981]

Before: WALLACE and FARRIS, Circuit Judges, and KING,[1] Chief District Judge.

Respondent's petition for rehearing is denied

[1] Hon. Samuel P. King, Chief Judge, United States District Court, District of Hawaii, sitting by designation.

246 NLRB No. 75 D—5823
San Francisco, Calif.

United States of America
Before the National Labor Relations Board

CASE 20—CA—13623

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA

and

CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

DECISION AND ORDER

On June 27, 1979, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and

[1] Respondents have excepted inferentially to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law

conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, Quad C Corporation and Associated General Contractors of California, San Francisco, California, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. November 14, 1979.

JOHN H. FANNING, Chairman.
JOHN A. PENELLO, *Member.*
JOHN C. TRUESDALE, *Member.*
NATIONAL LABOR RELATIONS BOARD.

[SEAL]

---

judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

351-668 O - 81 - 2

JD-(SF)-144-79
San Francisco, Calif.

United States of America
Before the National Labor Relations Board
Division of Judges
Branch Office
San Francisco, California

CASE NO. 20-CA-13623

QUAD C CORPORATION AND ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA

AND

CALIFORNIA STATE COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Alan D. Longman, for the General Counsel.
Lawrence H. Kay, for the Respondents.
Michael B. Roger, on behalf of *Van Bourg, Allen, Weinberg & Rogers*, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: The hearing in this case was held on May 3, 1979, and is based upon unfair labor practice charges filed January 24, 1978, by California State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, herein called the California State Council of Carpenters. On August 21, 1978, the General Coun-

sel of the National Labor Relations Board issued a complaint alleging that Quad C Corporation and Associated General Contractors of California, herein respectively called Respondent Quad C and Respondent AGC, violated Section 8(a)(5) and (1) of the National Labor Relations Act, herein called the Act, by refusing to recognize and bargain collectively with the California State Council of Carpenters as the exclusive collective-bargaining representative of Respondent Quad C's drywall installers. Respondents filed an answer denying the commission of the alleged unfair labor practices.[1]

Upon the entire record,[2] including my observation of the witnesses and upon consideration of the parties' briefs, I hereby make the following:

FINDINGS OF FACT

I. The alleged unfair labor practices

A. The facts

Respondent Quad C is licensed to operate as a general contractor in the construction industry, but does business primarily as a subcontractor. Since it started business in 1972 Quad C has worked exclusively on projects involving commercial buildings. After the steel frame is erected and the floors are poured, Quad C fireproofs the steel frame using its own lathers, plasterers and hod carriers. It then installs the interior ceilings and walls using its own journeymen and

[1] Respondents, in the answer to the complaint admit that Respondent Quad C and Respondent AGC and its employer members are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and meet the Board's applicable discretionary jurisdiction standard. Also Respondents admit that the California State Council of Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

[2] General Counsel's motion to correct transcript is granted.

trainee drywall installers, who attach Sheetrock, commonly known as gypsum wallboard, to the walls and ceilings. In addition to this drywall work the drywall installers perform conventional carpentry tasks which journeymen and apprentice carpenters are qualified to perform. Nonetheless, Quad C has always hired journeymen and trainee drywall installers to do all the work connected with and surrounding the installation of the gypsum wallboard, including the conventional carpentry work, and pays them the higher drywall installer rate of pay for all of the work.[3] In this regard I note that Quad C, in describing its business, calls itself a "drywall" subcontractor.[4]

Since commencing business in 1972 Quad C has been party to successive collective-bargaining agreements, known as the 46 Counties Agreement, entered into by and between various employer associations, including the Respondent AGC, on behalf of their employer-members, and the Carpenter's International Union, on behalf of its local unions and district councils situated in the 46 Northern California counties. This agreement is administered for the Carpenter's Inter-

---

[3] The record establishes that journeymen and apprentice carpenters are not qualified to do drywall work, i.e., install wallboard, because it requires special skills not acquired through the carpenters' apprenticeship training program or while working as a carpenter. The result is that drywall installers must go through a 2½ year apprenticeship training program which is separate and distinct from the carpenters' apprenticeship training program and that drywall contractors, such as Quad C, pay their drywall installers substantially more than carpenters because of their special skills and the special nature of their work.

[4] In its answer to the complaint, Quad C admits that it is engaged in business as "a drywall subcontractor." Also, in its AGC membership application Quad C represented that it performed "drywall" construction as a subcontractor.

national Union by the 46 Counties Carpenters' Conference Board. Quad C initially became a party to the 46 Counties Agreement by virtue of signing the 46 Counties Memorandum Agreement whereby it agreed to comply with the terms of the 46 Counties Agreement. Thereafter, in 1975, by joining the AGC and becoming a "regular" member of that organization, Quad C automatically became a party to the 46 Counties Agreement by virtue of its membership. The current 46 Counties Agreement is effective from June 16, 1977, through June 15, 1980. Section 7 of the agreement provides that "[t]he employer hereby recognizes the Union [referring to the Carpenter's International Union] as the sole and exclusive collective-bargaining representative of all employees and persons employed to perform work covered by this agreement." Section 4, which defines the "work covered" by the agreement, reads in pertinent part: "All carpentry work on all construction, including but not limited to, construction, erection, alteration, repair, modification, demolition, addition or improvement of or to a building or any other structure or construction." Regarding the hiring of applicants, Section 49 provides that employers are obligated to hire employees to perform work covered by the agreement through employment lists established by the local unions affiliated with the Carpenter's International Union in whose geographical jurisdiction the work is being performed. And Section 40 of the agreement, entitled "wage rates," contains the hourly wage rates for the following job classifications: "journeyman carpenters"; "hardwood floor layers"; "shinglers"; "power saw operators"; steel scaffold erectors and/or steel shoring erectors"; "saw filers"; "millwrights." These classifications are identical to the ones included in the 1974–77 predecessor to the current 46 Counties Agreement.

During the bargaining negotiations leading up to the current agreement the AGC proposed that the job classification "drywall hanger" be included in the agreement. The Union rejected this proposal and the AGC did not press the matter.

Quad C's drywall installers, from the time Quad C first began its operation in September 1972 until the early part of 1974, were employed pursuant to the terms and conditions of employment set forth in the 46 Counties Agreement. During this period of time this was the only collective-bargaining agreement between Quad C and the Carpenter's International Union or any of its affiliates. Quad C was not a party to the Drywall Master Agreement between the California Drywall Contractors Association and the California State Council of Carpenters effective August 1, 1971, to July 31, 1974. However, in early 1974, a representative of a local union affiliated with Carpenter's International Union, which was furnishing Quad C with drywall installers under the terms of the 46 Counties Agreement, notified Quad C that the Union would cease referring drywall installers to Quad C unless the Company became a party to the Drywall Master Agreement. So, on February 26, 1974, in order to insure itself a continuous supply of drywall installers, Quad C signed the Drywall Memorandum Agreement whereby Quad C, on behalf of itself and the California State Council of Carpenters, on behalf of its affiliated local unions and district councils, agreed that in consideration of services performed and to be performed by "drywall installers" that Quad C would agree "to comply with all wages, hours, working conditions, provisions and rules as set forth . . . in the Drywall Master Agreement dated August 1, 1971, to July 31, 1974 . . . and any modifications, changes, extensions or renewals of or to said Master Agreement which may

be negotiated by the parties thereto." And further agreed that "this agreement [referring to the Drywall Memorandum Agreement] shall remain in full force and effect until July 31, 1974, and shall continue from year to year thereafter unless either party shall give written notice to the other of the desire to change or cancel at least sixty (60) days prior to July 31, 1974, or July 31 of any succeeding year."

Article 3 of the 1971–74 Master Drywall Agreement, which agreement Quad C agreed to comply with by signing the Drywall Memorandum Agreement, provided that Quad C recognize the California State Council of Carpenters "as the exclusive bargaining representative of all employees and persons employed to perform work covered by the Agreement." And, the "work covered" by the agreement as described in Article 1 is as follows:

ARTICLE I

Work covered by this agreement

The work covered by this Agreement shall include but shall not be limited to the following described work at the construction job site:

Section 1. The installation, carrying, transportation, handling, stocking, and scrapping of all materials and component parts of all types of ceilings regardless of their material or composition or method or manner of installation, attachment or connection, including but not limited to all hangers, carrying channels, cross furring, stiffeners, braces, all bars regardless of material or method of attachment, all integrated gypsum wallboard ceiling heat panels, all radiant heat ceiling backing, all main tees, all cross tees, all splines, all wall and ceiling angles or moulding, all backing board and all finish ceiling materials, regardless of method or manner of installation.

Section 2. All work in connection with the installation, erection and/or application, carrying, transportation, handling, stocking of all materials and component parts of wall and partitions regardless of their material composition or method or manner of their installation, attachment or connection, including but not limited to all floor and ceiling runners, studs, stiffeners, cross bracings, fire blocking resilient channels, furring channels, doors and windows including frames, casing moulding, base accessory trim items, gypsum drywall materials, laminated gypsum systems, backing board for all systems, including but not limited to thin coat and other finished systems, plastic and/or paint finished bases, finish board, fireproofing of beams and columns, fireproofing of chase, sound and thermal insulation materials, fixture attachments including all layout work, preparation of all openings for lighting, air vents or other purposes, and all other necessary or related work in connection therewith.

Section 3. No limitation shall be placed on the work covered by this Agreement by reason of the surface or texture or purpose for which the materials described herein are used, designed or intended.

Section 4. It is further specifically understood that the installation, tieing and connection of all types of light iron and metal studs and all types of light iron furring erected to receive the materials specified in this article, including but not limited to gypsum wallboard, walls, partitions, gypsum wallboard, ceiling heat panels, backing boards, plastic or acoustical materials or any material attached to the above-described light iron construction is specifically included in the work covered by this Agreement.

Section 5. The provisions of this Article shall not be used or applied in any manner so as to be incon-

sistent with any applicable provision of the following Agreements:

a. 46 Northern California Counties Carpenters Master Agreement;
b. 11 Southern California Counties Carpenters Master Agreement;
c. San Diego Carpenters Master Agreement.

The Drywall Master Agreement also contains a union security clause whereby employees covered by the agreement after their 8th day of employment must become a member in good standing of the local carpenters' union which has the territorial jurisdiction in which the employer is doing business. Also, the agreement requires the employer to hire employees to perform the work covered by the agreement using employment lists established by the local unions affiliated with the Carpenter's International Union in whose geographical jurisdiction the work is being done. Finally, the agreement by its terms (Article 21) provides that upon its termination date, July 31, 1974, that the agreement shall continue to remain in full force and effect from year to year thereafter without change or modification, unless one of the parties gives written notice to the other party of proposed changes or modifications at least 60 days, but in no event more than 90 days prior to July 31, 1974. On August 1, 1974, the parties to the 1971–74 Drywall Master Agreement amended, modified and renewed the agreement and entered into a new agreement effective August 1 1974, to July 31, 1977. The substantive terms of the 1971–74 agreement which have been set out above are identical to those contained in the new agreement.

Following Quad C's execution of the Drywall Memorandum Agreement on February 26, 1974, Quad C complied with all of the terms of the Master Drywall Agreement from February 26, 1974, through approxi-

mately August 1974, at which time it took the position that since the Master Drywall Agreement had terminated as of July 31, 1974, that Quad C was not obliged to comply with the terms of the successor agreement.

On May 12, 1975, Quad C's president Robert Chaney wrote the California State Council of Carpenters, stating that his company was not a party of the Drywall Master Agreement "for the contract term beginning August 1, 1974, and ending July 31, 1975," but if there was any question about the Company's contractual obligation then, "pursuant to the applicable provisions of the Drywall Master Agreement, Quad C Corporation hereby gives written notice that it will not be a party to the Drywall Master Agreement for the contract term beginning August 1, 1975, and ending July 31, 1976." In reply, the California State Council of Carpenters, through its lawyer, by a letter dated May 21, 1975, advised Chaney, "Your purported notice to terminate the agreement is untimely and accordingly, my client will expect you to live up to all of its terms" and threatened to take "appropriate action" if Quad C failed to live up to the terms of the current Master Drywall Agreement. Quad C ignored this warning and in certain respects did not abide by the terms of the 1974–77 Drywall Master Agreement.[5] The California State Council of Carpenters retaliated by filing a contractual grievance against Quad C. The Joint Adjustment Board which handles such grievances under the Drywall Master Agreement's grievance procedure found that Quad C had violated the agreement in several respects and fined it. By letter dated January 20, 1977, the Joint Adjustment Board notified Quad C of its award. Quad C refused to comply with the Board's award so the California State

[5] The record reveals that Quad C did, however, comply with the agreement's wage provisions.

Council of Carpenters instituted a lawsuit to enforce the Board's award. By letter dated May 3, 1977, addressed to the California State Council of Carpenters, Quad C's president, Robert Chaney, in response to the lawsuit, reiterated the Company's position that it was not a party to the 1974–1977 Drywall Master Agreement and explained that in February 1974 it had signed the Drywall Memorandum Agreement "under duress" but that in any event, its obligation to abide by this agreement had terminated because thereafter Quad C had signed the 46 Counties Memorandum Agreement and on May 12, 1975, had given timely written notice that it would not be a party to the Drywall Master Agreement effective August 1, 1975. Chaney concluded this letter with the statement that should the court decide that Quad C was still legally bound to comply with the terms of the current Drywall Master Agreement, that "Quad C hereby gives written notice that it will not be a party to the Drywall Master Agreement with the contract term beginning August 1, 1977." The California State Council of Carpenters treated the aforesaid letter as a timely notice of Quad C's intention to terminate its obligation under the Drywall Memorandum Agreement to abide by the successor to the current Drywall Master Agreement negotiated by the parties.

On September 16, 1977, Michael Roger, the attorney for California State Council of Carpenters, wrote Quad C that since it had given timely notice to terminate the terms of the 1974–77 Master Drywall Agreement, that the California State Council of Carpenters requested a meeting with the Company to negotiate a new contract for the Company's drywall installers and asked the Company to contact the Union to arrange for such a meeting. In answer Quad C, through its attorney Louis Giraudo, by letter dated

September 21, 1977, advised Roger that "[i]t is the position of Quad C that they are not signators to any Drywall Master Agreement. The Company does not feel compelled to negotiate as it is a member of AGC and is advised by them that the work it performs is covered under the AGC Agreements with the California State Council of Carpenters." Giraudo promised to discuss the matter with AGC's attorney and to contact Roger the week of September 26 to discuss the matter. Giraudo failed to contact Roger as promised, so Roger, by letter dated October 6, 1977, repeated his previous bargaining demand and asked that either Giraudo or a representative of AGC make immediate arrangements for a negotiation meeting. Giraudo answered by letter dated October 13, 1977, in which he stated: "Quad C is a member of AGC, and as such has relinquished its bargaining rights to that organization. Quad C is informed and believes that all of the work it is presently performing is covered by the agreements negotiated by and between the Carpenters Union and AGC. As such, your demand for negotiations should be made directly to AGC."

On October 21, 1977, Roger wrote Gordon Douglas, AGC's assistant labor relations director, and explained to him that he represented the California State Council of Carpenters and that the Union was demanding that Quad C bargain with it concerning the terms and conditions of employment of Quad C's employees who performed drywall work. Roger enclosed Giraudo's October 13 letter wherein Giraudo stated that the Union's demand for recognition should be made to AGC, and Roger asked Douglas that a representative of AGC contact Roger to arrange for negotiation meetings over the terms and conditions to be applied to Quad C's employees performing drywall work. When there was no response to this letter Roger, on

December 19, 1977, again wrote AGC and demanded that a representative of AGC meet with the California State Council of Carpenters "to discuss the Quad C situation, including but not limited to the negotiations of terms and conditions to be applied to Quad C's Drywall employees for the period 1977–1980." In reply the AGC, through its attorney Lawrence Kay, by letter dated January 11, 1978, informed Roger:

> Quad C Corporation is a regular member of the AGC of California and has been since August 1975. As such Quad C is and has been since that time bound to the AGC Agreements with all the basic crafts, including the Carpenters . . . . The AGC Agreement [referring to the 46 Counties Agreement] covers all carpentry work and is the only carpenters agreement negotiated by the AGC on behalf of its regular members. Section 4 of the Master Agreement "work covered" specifically states: [Quotes Section 4 of the 1977–80 46 Counties Agreement]. It is therefore the position of AGC that we do not have the power of attorney from Quad C to represent them in negotiations or administration of any agreements other than the basic trade agreements, including the Carpenter Agreement.
> While the AGC is always willing to meet with any union and its representatives to discuss an alleged problem involving one of its members, we do not feel it is our obligation to meet and negotiate terms and conditions for work covered by the Carpenter Master Agreement to which Quad C is already currently signatory . . . .

Upon receipt of AGC's January 11, 1978 letter, the California State Council of Carpenters, on January 24, 1978, filed the instant unfair labor practice charges with the National Labor Relations Board (Board) charging Respondents Quad C and AGC with an illegal refusal to bargain with this union. In

its response to these charges the AGC, through its attorney, by letter dated February 3, 1978, notified the Board:

> AGC takes the position that the work currently being performed by Quad C, and having been performed in the past, is work covered under the AGC Master Labor Agreement with the Carpenters Union. It is our position that Quad C is bound to the terms and conditions of that Master Labor Agreement and we do not have the authority under our by-laws nor from Quad C to amend or modify the terms and conditions of that Master Labor Agreement.

Quad C, through its attorney by letter dated February 6, 1978, likewise informed the Board:

> Quad C Corporation has always taken the position that the Master Carpenters Agreement covered all and any carpentry work and is the only Carpenters' Agreement negotiated by AGC on behalf of its members. Section 4 of that Master Agreement, entitled 'work covered,' specifically states: [Quotes from 1977–80 46 Counties Agreement]. It is the position of Quad C that the drywall work done by Quad C Corporation is work done by carpenters and is covered under the AGC Agreement .... [I]t is the further position of Quad C Corporation that it will not and cannot negotiate a contract with the carpenters that contemplates the regulation of terms and conditions for work already covered by the Carpenters Master Agreement. In effect the Carpenters Union is requesting that Quad C enter into two agreements for the same work performed.

B. Conclusionary findings

On February 26, 1974, Quad C recognized the California State Council of Carpenters as its drywall installers exclusive collective-bargaining representa-

tive and entered into a Drywall Memorandum Agreement with that union wherein Quad C agreed to abide by all of the terms of the 1971–1974 Drywall Master Agreement negotiated by the California State Council of Carpenters and the California Drywall Contractors Association and any modifications, changes, extensions or renewals of said agreement. The Drywall Memorandum Agreement, by its terms was to "remain in full force and effect until July 31, 1974" and "continue from year to year thereafter" unless Quad C gave "written notice" of termination to the Union "at least 60 days prior to July 31, 1974, or July 31 of any succeeding year." Quad C failed to give timely notice of termination prior to the July 31, 1974 termination date, thus, Quad C was obligated to abide by the terms of the new Drywall Master Agreement entered into by the Union and Association on August 1, 1974, effective August 1, 1974, to July 31, 1977.[8] Thereafter, on May 31, 1977 Quad C gave timely notice of its intent to terminate the Drywall Memorandum Agreement. The California State Council of Carpenters acknowledged the timeliness of this notice of termination and, in September 1977 and October 1977, demanded that Quad C bargain with it about the terms of a new contract covering its drywall installers. Quad C refused and, among other things, advised the Union that since Quad C was a member of the AGC that the Union's bargaining demands should be directed to that organization. The Union directed its bargaining demands to the AGC which reject them.[7] It is the aforesaid

[8] I reject Respondents' contention that Quad C's May 12, 1975 letter to the California State Council of Carpenters, wherein it stated it would not be a party to the Drywall Master Agreement "for the contract term beginning August 1, 1975 and ending July 31, 1976," was sufficient to terminate Quad C's obligation to abide by the 1974–1977 Drywall Master Agreement.

conduct, the refusal of Quad C and AGC to bargain with the California State Council of Carpenters for a contract covering Quad C's drywall installers, which the complaint alleges constitutes a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

For, under the terms of the Drywall Memorandum Agreement Quad C agreed to comply with any "modifications, changes, extensions or renewals of or to" the 1971-1974 Drywall Master Agreement "which may be negotiated by the parties." Inasmuch as the parties to the Drywall Master Agreement negotiated a new contract to succeed the 1971-1974 agreement and did this prior to Quad C's May 12, 1975, letter of termination, this letter was untimely. See, *Ted Hicks and Associates*, 232 NLRB 712; *Phoenix Air Conditioning, Inc.*, 231 NLRB 341.

[7] I reject Respondent AGC's contention that it was without authority to represent Quad C in contract negotiations covering Quad C's drywall workers with the California State Council of Carpenters. Article 8 of AGC's By-Laws belies this contention. By virtue of Article 8, AGC's Board of Directors has the power on behalf of members such as Quad C "to negotiate labor agreements" with the "United Brotherhood of Carpenters and Joiners of America" and its "affiliates" which "cover job site construction operations" and further provides that no member of AGC, such as Quad C, shall bargain independently with the "United Brotherhood of Carpenters and Joiners of America" or its "affiliates" concerning "job site construction operations." Clearly, as Quad C recognized in its letter of October 13, 1977 to the California State Council of Carpenters wherein Quad C stated it was an AGC member and as such had relinquished its bargaining rights to AGC, Quad C, by virtue of its membership in the AGC designated that organization as its bargaining representative, in connection with the negotations of a contract covering its drywall workers. In addition, it is significant that AGC in its February 3, 1978, letter to the Board defending its refusal to bargain did not defend on the ground that it was without authority to represent Quad C, rather it took the position that Quad C's drywall workers were already covered by the terms of the 46 Counties Agreement which the AGC had no power to amend or modify.

It is well settled that an employer's recognition of a union as the collective-bargaining representative of a unit of its employees gives rise to a presumption that a majority of those employees desire representation by the union. This presumption of majority support continues as an irrebutable presumption during the term of a collective-bargaining agreement and continues as a rebuttable presumption after its expiration. See *N.L.R.B.* v. *Crimptex, Inc.*, 517 F.2d 501, 503 (C.A. 1); *Pioneer Inn Associates,* 228 NLRB 1263, enfd. 578 F.2d 835 (C.A. 9). In the instant case Quad C, on February 26, 1974, recognized the California State Council of Carpenters as the exclusive bargaining representative of its drywall workers and entered into a collective-bargaining agreement with that union which Quad C allowed to renew itself for another 3 years. Under these circumstances, Quad C, upon the termination of the 1974–1977 Drywall Master Agreement, was obligated to bargain with the California State Council of Carpenters as the representative of its drywall workers absent a showing that the Union in fact no longer had majority support or that Quad C had a reasonable doubt based upon objective considerations, of the union's continued majority status. See *Pioneer Inn Associates,* 228 NLRB 1263, enfd. 578 F.2d 835 (C.A. 9). Respondent makes no contention that the California State Council of Carpenters did not represent a majority of Quad C's drywall workers or that Quad C had a reasonable doubt that this was so, rather Respondents urge that the complaint be dismissed because: (1) The Drywall Memorandum Agreement was a pre-hire agreement sanctioned by 8(f), hence, it did not give rise to a presumption of majority status on behalf of the California State Council of Carpenters; (2) The Drywall Memorandum Agreement was not validly entered into

pursuant to Section 8(f) as it was the product of coercion; (3) The Drywall Memorandum Agreement did not cover an appropriate bargaining unit; (4) Quad C's drywall workers are represented by the Carpenters' International Union and are covered by the terms of the 46 Counties Agreement between AGC and the Carpenters' International Union.

(1)

Respondents' contention that the Drywall Memorandum Agreement does not give rise to the usual presumption of majority status on behalf of the California State Council of Carpenters inasmuch as it was an 8(f) contract[8] is without merit. I recognize that since an 8(f) contract can exist without majority status, there is no presumption of majority status that flows from the mere existence of the 8(f) contract. See, *R. J. Smith Construction Co.*, 191 NLRB 693, 695; *Dee Cee Floor Covering, Inc.*, 232 NLRB 421, 421–422. But an 8(f) contract will create a presumption of majority status where a majority of the employees covered by the contract are members of the union. See *N.L.R.B.* v. *Irvin-McKelvy*, 475 F.2d 1265 (C.A. 3); *Haberman Construction Co.*, 236 NLRB No. 7; *V. M. Construction Co., Inc.*, 241 NLRB No. 84. In the instant case the parties stipulated that all times material herein all of the drywall workers employed by Quad C were members of local unions affiliated with the California State Council of Carpenters. It is for this reason that I reject Respondents' contention that Quad C's collective-bargaining relationship with the California State Council of Carpenters does not give rise to a presumption of majority status.

---

[8] Section 8(f) of the Act permits a construction industry employer to enter into a "prehire" contract with a union prior to the establishment of the union's majority status.

(2)

Likewise I reject Respondents' further contention that the Drywall Memorandum Agreement was not validly entered into because it was the product of coercion. Respondents appear to be taking the position that the California State Council of Carpenters committed an unfair labor practice by coercing Quad C into signing the Drywall Memorandum Agreement when it threatened to cease referring drywall workers to Quad C if it did not sign the agreement. But even if such conduct was illegal when it occurred (but see, *Los Angeles Building & Construction Trades Council, et al., (Donald Schriver, Inc.)*, 239 NLRB No. 42), it is now barred by the 6-month limitations period set forth in Section 10(b) of the Act. *N.L.R.B.* v. *Tragniew, Inc.*, 470 F.2d 669, 673 (C.A. 9); *Lane-Coos-Curry Douglas Counties Building and Construction Trades Council* v. *N.L.R.B.*, 415 F.2d 656, 659 n.7 (C.A. 9). In any event, it does not appear that the California State Council of Carpenters' threat to refrain from supplying drywall installers to Quad C impugns the validity of the Drywall Memorandum Agreement since the parties stipulated that at all times material, which includes February 26, 1974, the date the agreement was signed, all of Quad C's drywall workers were members of local unions affiliated with the California State Council of Carpenters.

(3)

Regarding Respondents' contention that a unit of Quad C's drywall workers does not constitute an appropriate bargaining unit, the record establishes that Quad C employs latherers, plasterers, hod carriers and drywall installers. Its latherers, plasterers and hod carriers are represented respectively by the Lather-

ers', Plasterers' and Laborers' Unions with whom Quad C has separate collective-bargaining agreements. Its remaining employees, who perform the drywall work, are members of local unions affiliated with the Carpenters' International Union. Although these workers perform a substantial amount of conventional carpentry work, they are either journeyman or trainee drywall installers. The drywall installers work together doing the same work, possess the same identifiable skills, receive the same rate of pay and work under the same terms and conditions of employment. In view of the foregoing, I am satisfied that Quad C's drywall installers are a readily identifiable and homogeneous grouping of construction tradesmen with a community of interest separate and apart from the other workers. See, *Hychem Constructors, Inc.*, 169 NLRB 274, 276; *R. B. Butler, Inc.*, 160 NLRB 1595, 1600. Therefore, and inasmuch as Quad C has always treated its drywall installers as a separate unit of employees, I conclude that they constitute an appropriate unit for bargaining purposes.[9]

(4)

In support of their contention that Quad C's drywall installers are covered by the 46 Counties Agreement, Respondents point out that Quad C has continuously been a party to the 46 Counties Agreement, that when it first began operations in Sepember 1972 Quad C employed employees classified as drywall in-

[9] The fact that a substantial amount of the work done by Quad C's drywall installers is conventional carpentry work of the type covered by the 46 Counties Agreement does not detract from this conclusion inasmuch as Quad C chooses to employ drywall installers to perform the conventional carpentry work as well as the drywall work.

stallers pursuant to the terms of the 46 Counties Agreement which contains a work coverage provision broad enough to cover this kind of work,[10] and that the majority of the work performed by Quad C's drywall installers consists of coventional carpentry work which normally would be covered by the terms of the 46 Counties Agreement. But, as pointed out by the General Counsel, there is other more convincing evidence which indicates that when Quad C, in February 1974, signed the Drywall Memorandum Agreement, it recognized the California State Council of Carpenters as its drywall installers' collective-bargaining representative and agreed to abide by the terms of the Drywall Master Agreement, instead of the 46 Counties Agreement, in establishing the terms and conditions of employment for these employees.

The installation of gypsum wallboard is recognized by employers in the construction industry in the State of California as a specialty trade performed by craftsmen who possess special skills separate and apart from the special skills possessed by journeymen carpenters. Drywall installers have their own apprenticeship program which is separate and distinct from the apprenticeship training program for journeyman carpenters. Employers, such as Quad C, who are drywall contractors, usually employ persons classified as journeyman and trainee drywall installers rather than employees classified as journeyman and apprentice carpenters. Also, for at least 20 years the California State Council of Carpenters, on behalf of the local unions and district councils in the State of California affiliated with Carpenters' International Union, has negotiated successive Drywall Master

[10] As described, *supra*, the work coverage provision covers "all carpentry work on all construction."

Agreements with the California Drywall Contractors Association, which cover all work connected with the installation of gypsum drywall material on walls and ceilings, whereas, the work coverage provision of the 46 Counties Agreement fails to mention drywall work. And, although the 46 Counties Agreement includes a wage rate for the classification "journeyman carpenters" as well as wage rates for several other specialty job classifications which fall under the jurisdiction of the Carpenters' International Union, it significantly omits the classification for "drywall installer" which is specifically included in the Drywall Master Agreement. In fact, during the negotiations for the current 1977–1980 46 Counties Agreement Respondent AGC unsuccessfully attempted to include the classification of "drywall hangers" within the coverage of the agreement.

The foregoing circumstances indicate that it was the intent of the Carpenters' International Union and its affiliates, including the California State Council of Carpenters, that the position of drywall installer should be covered by the provisions of the Drywall Master Agreement rather than the 46 Counties Agreement. Thus, it is not surprising that in February 1974, a business representative from a local carpenters' union informed Quad C that the carpenters' unions would no longer honor Quad C's requests for carpenters classified as drywall installers under the terms of the 46 Counties Agreement but would continue to supply Quad C with carpenters classified as drywall installers only if it agreed to employ them pursuant to the terms of the Drywall Master Agreement. Quad C agreed to do this and on February 26, 1974, signed the Drywall Memorandum Agreement which, by its terms, obligated Quad C to recognize the California

State Council of Carpenters as its drywall installers' collective-bargaining representative and obligated Quad C to abide by the terms of the Drywall Master Agreement in consideration for services to be performed by the "drywall installers" furnished it by the several local carpenters' unions. These circumstances indicate that there can be no doubt that Quad C knew when it signed the Drywall Memorandum Agreement that as of that date the terms and conditions of employment of its workers classified as journeyman and trainee drywall installers were no longer governed by the 46 Counties Agreement but were governed by the Drywall Master Agreement. Indeed Quad C, for the remainder of the term of the 1971–1974 Drywall Master Agreement abided by its terms in connection with its employment of workers classified as drywall installers. These circumstances persuade me that Respondents' contention that Quad C, in establishing the terms and conditions of employment for its drywall installers, is obliged to abide by the 46 Counties Agreement is without merit. Rather, I find that Quad C's workers classified as drywall installers were covered by the terms of the Drywall Master Agreement from February 26, 1974, when Quad C signed the Drywall Memorandum Agreement, until July 31, 1977, when pursuant to a timely notice of termination that agreement was terminated. During this period of time Quad C was obliged to comply with all of the terms and conditions of the Drywall Master Agreement in employing workers classified as drywall installers and upon the termination of the agreement, under settled principles of law, was obligated to bargain in good faith for a new agreement with the California State Council of Carpenters as the exclusive representative of the Company's drywall installers.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondents Quad C and AGC are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The California State Council of Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeyman and trainee drywall installers employed by Quad C within the State of California, but excluding all other employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, California State Council of Carpenters has been and is now the exclusive representative of all the employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain with the California State Council of Carpenters as the exclusive representative of the employees in the aforesaid unit Respondents Quad C and AGC have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section

10(c) of the Act, I hereby issue the following recommended:[11]

ORDER

Respondents, Quad C Corporation and Associated General Contractors of California, San Francisco, California, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with California State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, as the exclusive representative of the following appropriate bargaining unit: All journeyman and trainee drywall installers employed by Quad C Corporation within the State of California, but excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with California State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, as the exclusive representative of all employees in the appropriate unit, described above, with regard to rates of

[11] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their offices and construction premises copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondents' authorized representatives, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

Dated: June 27, 1979.

JERROLD H. SHAPIRO
Administrative Law Judge

---

[12] In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FORM NLRB-4707 (5-69)

APPENDIX

JD-(SF)-144-79

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to bargain with California State Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, as the exclusive representative of employees in the following appropriate unit:

> All journeyman and trainee drywall installers employed by Quad C Corporation within the State of California, but excluding all other employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain collectively with the aforesaid union as the exclusive representative of all employees in the appropriate unit, described above, with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

QUAD C CORPORATION
(Employer)

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA
(Employer)

Dated_____ By: _____
(Representative) (Title)

Dated_____ By: _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,

13018 Federal Building - Box 36047
450 Golden Gate Ave., San Francisco, CA
Telephone: (415) 556-0335